

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DYNAMIC SPORTS NUTRITION, INC.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 04:08-CV-1929
	§	
ANTHONY ROBERTS a/k/a	§	JURY
ANTHONY CONNORS,	§	
A ROBERTS, LLC and	§	
DOUGLAS R. DREIER d/b/a	§	
STEROID-RX.COM,	§	
	§	
<i>Defendants.</i>	§	

**PLAINTIFFS' MOTION FOR ENTRY OF PARTIAL DEFAULT
ON LIABILITY AGAINST DEFENDANTS
ANTHONY ROBERTS a/k/a ANTHONY CONNORS AND A. ROBERTS, LLC**

TO THE HONORABLE LEE H. ROSENTHAL, UNITED STATES DISTRICT JUDGE:

Plaintiff **Dynamic Sports Nutrition, Inc.** ("Plaintiff") files this Motion for Partial Default Judgment on Liability Against Defendants **Anthony Roberts a/k/a Anthony Connors** ("Roberts"), and **A Roberts, LLC** (collectively, the "Roberts Defendants"), and requests the clerk of the Court to enter a default judgment on liability as follows:

I.
INTRODUCTION

1. On or about June 18, 2008, the Plaintiff filed its Original Complaint, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction in this case. Plaintiff brought claims against the Roberts Defendants for Misappropriation/Theft/Disclosure of Trade Secrets and Confidential Information and civil conspiracy. Plaintiff sued Roberts individually for violation of the Texas Theft Liability Act and the federal Computer Fraud &

Abuse Act, unfair competition, breach of fiduciary duty and the duty of loyalty and conversion, among other causes of action. On June 23, 2008, the Roberts Defendants were served with summons and a copy of the Complaint via personal service through a process server. [**Exhibit 1 to Motion**, Summons & Return of Service]. The Roberts Defendants therefore had until July 14, 2008 to file their Answer or make an appearance. FED. R. CIV. P. 12(a)(1)(a). The Roberts Defendants have not filed a responsive pleading or otherwise defended the suit, nor have they sought or been given an extension of time to file their responsive pleadings.

2. The Roberts Defendants' last known address is 132 Lawrence Avenue, Hasbrouck Heights, NJ 07604. [**Exhibit 2 to Motion**, Certificate of Last Known Address]. Given the Roberts Defendants failure to timely file a responsive pleading, Plaintiff requests entry of default for liability on all causes of action.

II. **ARGUMENT**

3. The clerk of the Court may enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. FED. R. CIV. P. 55(a); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). Here, the Clerk should enter a default against the Roberts Defendants because the Roberts Defendants did not file an answer within 20 days after June 23, 2008, the date of service, and did not otherwise defend the suit. Plaintiff meets the procedural requirements for obtaining entry of default from the clerk, as demonstrated by Brian Clapp's sworn affidavit. [**Exhibit 3 to Motion**, Affidavit of Brian Clapp]. In addition, the Roberts Defendants are not infants, incompetent persons, or members of the United States military. 50 U.S.C. § 520(1); FED. R. CIV. P. 55(b)(1), (e). [**Exhibit 4 to Motion**, Soldier's and Sailors Affidavit]. Because the Roberts Defendants did not file a responsive pleading or

otherwise defend the suit, the Roberts Defendants are not entitled to notice of entry of default. FED. R. CIV. P. 55(b)(1).

III.
LIABILITY/DAMAGES

4. Plaintiff is entitled to damages on liability, but because damages are unliquidated at this time, Plaintiff is only requesting a judgment on liability at this time. Plaintiff will provide evidence of its damages at a later hearing to be set with the Court. Plaintiff's total damages in this matter are exclusive of attorney's fees and costs. The Plaintiff requested reasonable and necessary attorney's fees and costs in its Complaint. Plaintiff will provide proof of these fees and costs at the time it provides evidence of its damages and, therefore, does not waive the same.

IV.
CONCLUSION & PRAYER

For the foregoing reasons, Plaintiff requests the Clerk to enter a default and a default judgment in favor of the Plaintiff granting the relief requested in this Motion.

DATED: August 22, 2008.

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.



By: _____

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ATTORNEYS FOR PLAINTIFF
DYNAMIC SPORTS NUTRITION, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Entry of Partial Default on Liability Against Defendants Anthony Roberts a/k/a Anthony Connors and A. Roberts, LLC was served to the parties listed below via the following means on this 22nd day of August 2008.

Mr. Anthony Roberts
132 Lawrence Avenue
Hasbrouck Heights, NJ 07604

Via CMRRR: 7117 7792 8430 0000 1278

Mr. Douglas R. Dreier
124 Thornberry Drive
Castleberry, Florida 3207-3338

Via Email: doug@muscleevolutionusa.com



Stewart Hoffer

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